IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7671 OF 2003

Mahadev Govind Patil.... ... Petitioner.

Versus

KNSWA Textiles Ltd. & Ors.... ... Respondents.

Ms. Deepa Sawant i/by Mr. C.G.Gavnekar
for the Petitioner.

None for the Respondents.

CORAM : S. A. BOBDE, J.

DATED : JANUARY 18, 2005.

P.C.:

The petitioner, who made a bid in a court auction has challenged the order dated 9th August, 2002 by which the learned II Jt. Civil Judge, Senior Division, Kolhapur, has refused to accept the bid, including the bid made by the petitioner on 19th December, 1998 and directed issue of fresh proclamation of sale in accordance with the Order 21 rule 69(2) of the Code of Civil Procedure after calling for a fresh statement of a current market prices.

2. The reason given by the court is that the bids of the property which is to be auctioned were received on 19th December, 1998 on the basis of the price shown by the plaintiff in the year 1997. The auction was held on 19th December, 1998. On the date the court passed order i.e. on 9th August, 2002 the Court rightly observed that there was three and half years of lapse and therefore the property could fetch a higher price.

3. The learned Counsel for the petitioner strongly contended that the impugned order is not legally sustainable. However, this contention does not appear to be correct in view of the observation of the Court that the sale has been adjourned for a period longer than 30 days and therefore under Order 21 rule 69(2) a fresh proclamation must be issued unless the judgement debtor consents to waive it. Order 21 rule 69(2) reads as follows:

> "(2) Where a sale is adjourned under sub-rule (1) for a longer period than thirty days, a fresh proclamation under rule 67 shall be made, unless the judgment-debtor consents to waive it."

The judgment-debtor not having consented, the order of

the executing court is unimpeachable.

4. In view of the above, there is no merit in the writ petition, which is hereby dismissed.

Sd/-

S. A. BOBDE, J.